



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

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MAR 23 2012

David Valenstein
Federal Railroad Administration
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Washington, D.C. 20590

Tom Fellenz
California High-Speed Rail Authority
770 L Street, Suite 800
Sacramento, CA 95814

Subject: Response to Checkpoint C - Request for Agreement on Preliminary Least Environmentally Damaging Practicable Alternative and Draft Mitigation Plan for California High-Speed Rail Project Merced to Fresno Section

Dear Mr. Valenstein and Mr. Fellenz:

Thank you for the opportunity to provide comments and recommendations in advance of publication of the Final Environmental Impact Statements (Final EIS) for the Merced to Fresno section of the California High Speed Rail (HSR). We hope our feedback and coordination will facilitate resolution of environmental resource and permitting challenges. The Federal Railroad Administration (FRA) is the lead federal agency for compliance with the National Environmental Policy Act (NEPA) and other federal laws, and California High Speed Rail Authority (CHSRA) is serving as the joint-lead under NEPA and is the lead agency for compliance under the California Environmental Quality Act (CEQA).

EPA feedback is aimed at integrating the requirements of the Clean Water Act (CWA) Section 404 permitting with NEPA requirements. The purpose of this letter is to provide EPA's "agreement" with "Checkpoint C", a step in the integration process described in the *NEPA/ CWA Section 404/Rivers and Harbors Act Section 14 (33 U.S.C. 408) Integration Process for the California High-Speed Train Program Memorandum of Understanding* (NEPA/404 MOU) dated December 2010. To facilitate effective integration of CWA Section 404 and NEPA for this project, EPA continues to coordinate closely with the Army Corps of Engineers (Corps).

Least Environmentally Damaging Practicable Alternative (LEDPA)

Per the NEPA/404 MOU, EPA provides agreement with FRA and CHSRA's selection of the "Hybrid" alternative as the preliminary LEDPA for the north-south connection between the cities of Merced and Fresno. We note that the Hybrid alternative currently includes design alternatives for travel within the Chowchilla area, to be retained for future analysis and alternative selection through the San Jose to Merced EIS process. We also recognize that FRA and CHSRA have decided to defer selection of a preferred "Wye" alternative to connect the Merced to Fresno section with the San Jose to Merced section of the HSR system. We understand that this decision will be reached through the San Jose to Merced EIS process. In the Final EIS and Record of Decision for the Merced to Fresno project, please describe the basis for these deferred decisions and the anticipated schedule, timing, and the future environmental document that will address these remaining decision points. Although we believe FRA and CHSRA have demonstrated the "Hybrid" alignment to be the preliminary LEDPA overall, we note that prior to permit issuance, a final 404(b)(1) alternatives analysis will need to demonstrate that the design options for Chowchilla and the "Wye" have avoided and minimized impacts to aquatic resources to the maximum extent practicable.

Draft Mitigation Plan

Per the NEPA/404 MOU, EPA provides agreement with FRA and CHSRA's Draft Mitigation Plan, a conceptual strategy specifying resources available for the establishment and/or rehabilitation of aquatic resources. The draft plan provides preliminary assurance that sufficient opportunities are likely to exist to compensate for unavoidable losses. We note, however, that the methods employed to estimate aquatic resource impacts and the potential loss of functions and services associated with those impacts still remain uncertain, and any degree of uncertainty remaining at the time of permit issuance will in part determine the level of mitigation required. EPA will continue to work with the USACE to provide guidance to FRA and CHSRA on reducing uncertainty to the maximum extent practicable and provide substantive comment on the development of a Final Mitigation Plan. In the Final EIS and Record of Decision for the Merced to Fresno project, please acknowledge remaining work needed to address uncertainties regarding estimated aquatic resource impacts and describe the schedule, timing and anticipated process for completing the CWA Section 404 permitting process.

Thank you for requesting EPA's agreement on the LEDPA and Draft Mitigation Plan. We look forward to further participation in the development of environmental documents for this project and the plan for overall environmental sustainability of the HSR system. EPA will ultimately review EISs for each section of the California HSR system pursuant to NEPA, Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508), and Section 309 of the Clean Air Act. EPA will also review CWA Section 404 permit applications for each HSR section for compliance with EPA's 404(b)(1) Guidelines (40 CFR 230.10). We appreciate this opportunity to address potential environmental issues as early as possible.

If you have any questions or comments please contact the NEPA lead for this project, Jen Blonn, at (415) 972-3855 (blonn.jennifer@epa.gov) or the aquatic resources lead for this project, Sarvy Mahdavi, at (415) 972-3173 (mahdavi.sarvy@epa.gov).

Sincerely,



Connell Dunning, Transportation Team Supervisor
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CC Via Email:

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